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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

In re:

TRACY MICHELLE FOOTE,

Debtor.

Chapter 7 Case No. 22-02231

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF STUDENT
LOANS**

TRACY MICHELLE FOOTE,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
EDUCATION, DOES 1-100 Inclusive, et al.,

Defendants.

Adversary Proceeding No.:

**COMPLAINT TO DETERMINE DISCHARGEABILITY
OF STUDENT LOANS**

Plaintiff Tracy Michelle Foote (“Plaintiff” or “Debtor”) by and through her attorney,
Stephan M. Brown, brings the following complaint and alleges as follows:

I. NATURE OF CASE

1. This is an action to declare the Plaintiff’s student loan debt to Defendants, the United
States Department of Education (“US DOE”), dischargeable as an undue hardship under 11
U.S.C. § 523(a)(8).

II. JURISDICTION AND VENUE

2. On August 25, 2022, Plaintiff filed a voluntary chapter 7 bankruptcy proceeding, Case Number 2022-02231.

3. This Complaint is an adversary proceeding as defined by Fed. R. Bankr. P. 7001(6).

4. Pursuant to 28 U.S.C. §§ 1334 and 157, the Court has jurisdiction over this adversary action to determine the dischargeability of a debt under 11 U.S.C. § 523(a)(8). This is a core proceeding under 28 U.S.C. § 157(b)(2)(I). The Plaintiff consents to the Bankruptcy Court's entry of a final order.

5. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1409(a).

III. PARTIES

6. Plaintiff is a resident at 3680 Harmony Hill, Fallbrook, California.

7. Defendant is a qualifying governmental institution in the business of making, insuring, guaranteeing or servicing student loans. Defendant's mailing address is United States Department of Education, 400 Maryland Ave., SW, Washington, DC 20202.

IV. STATEMENT OF FACTS

8. The current outstanding balance of the student loans is \$171,831.00. A list of the loans with current balances is attached as Exhibit A.

9. Plaintiff incurred the student loans while attending Northcentral University where Plaintiff was pursuing a Doctoral degree in Business Administration. No payments were due on these loans while Plaintiff was a full-time student.

10. Plaintiff left her course of study in 2018 and did not receive a degree.

a. Plaintiff did not receive a degree in part, because the Dissertation Chair was replaced by an attorney that did not have a required CITI Training Certificate which all doctoral students and Dissertation Chairs must have for review and approval of the relevant IRB package.

1 b. Since Plaintiff spent too much time going back and forth between
2 Northcentral University and United States University to get IRB approval, her time ran
3 out on all classes and extensions.

4 c. As a result, Plaintiff filed an appeal with Northcentral University and
5 was told that the Dean would contact her in a few days, but the Dean never did and
6 Plaintiff was unable to complete the program.

7 d. Plaintiff later joined a class action lawsuit filed against Northcentral
8 University where she received \$5,000.

9 11. Plaintiff incurred student loans while attending Walden University where Plaintiff
10 was pursuing a Doctoral degree. No payments were due on these loans while Plaintiff was a
11 full-time student.

12 12. Plaintiff completed her course of study in 2022 and received a degree in Business
13 Administration.

14 13. Under the terms of the loans, Plaintiff was required to begin payments six months
15 after enrollment in the school ended.

16 14. Under the U.S. Department of Education's Standard Repayment Plan, Plaintiff
17 would be required to maintain monthly payments of \$1,882.53 for ten years in order to pay off
18 the balance of the student loans.

19 15. Since repayment on the student loans began, the Plaintiff has:

20 a. Made approximately 50 payments on the loans, totaling approximately
21 \$50,000.00.

22 b. Received 10 cumulative forbearances and deferments totaling 224.8
23 months.

24 16. When Plaintiff filed the voluntary petition over 18 months ago she was employed as
25 a PPI Business Systems Specialist with Thermo Fisher Scientific and Plaintiff's gross monthly
26 income from that employment was \$9,179.21.

27 17. Plaintiff's monthly household income is supplemented by social security benefits
28 paid to her mother who also lives with her. Plaintiff continues to depend on her mother's

1 contributions. At the time of filing, Plaintiff's monthly household expenses far exceeded her
2 monthly household income which created a deficit of \$1,203.68 per month.

3 18. Since then Plaintiff was displaced, and she is currently working part time as a
4 contractor where she teaches at United States University, Inc., WestCliff Management Group,
5 and Western Governors University.

6 a. Plaintiff's gross monthly income from the contract work at United States
7 University, Inc. is \$906.25.

8 b. Plaintiff's gross monthly income from the contract work at WestCliff
9 Mgmt Group is \$1,481.25.

10 c. Plaintiff's gross monthly income from the contract work at Western
11 Governors University is \$1,117.71.

12 **V. DETERMINATION OF DISCHARGEABILITY**

13 19. Under Section 523(a)(8) of the Bankruptcy Code, certain student loans may not be
14 discharged in bankruptcy unless the bankruptcy court determines that payment of the loan
15 "would impose an undue hardship on the debtor and the debtor's dependents." 11 U.S.C. §
16 523(a)(8).

17 20. The most common framework for assessing undue hardship is the so-called
18 "Brunner test" from *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d
19 395 (2d Cir. 1987). To discharge a student loan under the Brunner test, a bankruptcy court
20 must find that the debtor has established that (1) the debtor cannot presently maintain a
21 minimal standard of living if required to repay the student loan, (2) circumstances exist that
22 indicate the debtor's financial situation is likely to persist into the future for a significant
23 portion of the loan repayment period, and (3) the debtor has made good faith efforts in the past
24 to repay the student loan. *Id.* at 396.

25 21. Plaintiff is unable to make payments on her student loans. After deducting
26 Plaintiff's reasonable and necessary expenses from her income, Plaintiff's discretionary
27 income is insufficient to make student loan payments as required under the loan agreement.
28

24. Based upon the foregoing facts and circumstances, Plaintiff cannot maintain a minimal standard of living if forced to repay the student loans.

Respectfully submitted on April 10, 2024.

Stephan M. Brown
Attorney for Debtor

Exhibit A**List of Student Loans with Current Balances**

Loan Type (Loan Holder/Servicer)	Principal Balance	Accrued Interest	Status
DIRECT STAFFORD UNSUBSIDIZED (DEPT OF ED/EDFINANCIAL)	\$ 8,298.00	\$ 0.00	BANKRUPTCY CLAIM, ACTIVE
DIRECT PLUS GRADUATE (DEPT OF ED/EDFINANCIAL)	\$ 12,267.00	\$ 0.00	BANKRUPTCY CLAIM, ACTIVE
DIRECT STAFFORD UNSUBSIDIZED (DEPT OF ED/EDFINANCIAL)	\$ 6,458.00	\$ 0.00	BANKRUPTCY CLAIM, ACTIVE
DIRECT STAFFORD UNSUBSIDIZED (DEPT OF ED/EDFINANCIAL)	\$ 20,500.00	\$ 0.00	BANKRUPTCY CLAIM, ACTIVE
DIRECT STAFFORD UNSUBSIDIZED (DEPT OF ED/EDFINANCIAL)	\$ 20,500.00	\$ 281.00	BANKRUPTCY CLAIM, ACTIVE
DIRECT STAFFORD UNSUBSIDIZED (DEPT OF ED/EDFINANCIAL)	\$ 13,667.00	\$ 992.00	BANKRUPTCY CLAIM, ACTIVE
DIRECT STAFFORD UNSUBSIDIZED (DEPT OF ED/EDFINANCIAL)	\$ 2,395.00	\$ 186.00	BANKRUPTCY CLAIM, ACTIVE
DIRECT STAFFORD UNSUBSIDIZED (DEPT OF ED/EDFINANCIAL)	\$ 18,579.00	\$ 1,278.00	BANKRUPTCY CLAIM, ACTIVE
DIRECT STAFFORD UNSUBSIDIZED (DEPT OF ED/EDFINANCIAL)	\$ 22,592.00	\$ 1,709.00	BANKRUPTCY CLAIM, ACTIVE
DIRECT STAFFORD UNSUBSIDIZED (DEPT OF ED/EDFINANCIAL)	\$ 19,130.00	\$ 1,341.00	BANKRUPTCY CLAIM, ACTIVE
DIRECT STAFFORD UNSUBSIDIZED (DEPT OF ED/EDFINANCIAL)	\$ 19,905.00	\$ 1,753.00	BANKRUPTCY CLAIM, ACTIVE